



**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 8**

**[Docket ID. OCC-2014-0009]**

**RIN 1557-AD82**

**Assessment of Fees**

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is adopting a final rule to increase assessments for national banks and Federal savings associations (FSAs) with assets of more than \$40 billion. The increase will range between 0.32 percent and approximately 14 percent, depending on the total assets of the institution as reflected in its June 30, 2014, Consolidated Report of Condition and Income (Call Report). The average increase in assessments for affected banks and FSAs will be 12 percent. The final rule will not increase assessments for banks or FSAs with \$40 billion or less in total assets. The OCC will implement the increase in assessments by issuing an amended Notice of Office of the Comptroller of the Currency Fees and Assessments (Notice of Fees), which will become effective as of the semiannual assessment due on September 30, 2014. In conjunction with the increase in assessments, the final rule updates the OCC's assessment rule to conform with section 318 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which reaffirmed the authority of the Comptroller of the Currency (the Comptroller) to set the amount of, and methodology for, assessments. The final rule also makes technical and conforming changes to the assessment rule.

**DATES:** Effective [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Gary Crane, Deputy Chief Financial Officer, Financial Management, (202) 649-5540, or Mitchell Plave, Special Counsel, or Henry Barkhausen, Attorney, Legislative and Regulatory Activities Division, (202) 649-5490, for persons who are deaf or hard of hearing, TTY, (202) 649-5597.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The National Bank Act<sup>1</sup> and the Home Owners' Loan Act<sup>2</sup> authorize the Comptroller to recover the costs of the OCC's operations through assessments, fees, and other charges on national banks and FSAs.<sup>3</sup> The Comptroller sets assessments, fees, and other charges to meet the OCC's expenses in carrying out its supervisory activities.<sup>4</sup> In setting assessments, the Comptroller has broad authority to consider variations among institutions, including the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller determines is appropriate.<sup>5</sup>

The OCC collects assessments from national banks and FSAs in accordance with 12 CFR part 8. Under part 8, the base assessment for banks and FSAs is calculated using a table with eleven categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank and FSA is the sum of a base amount, which is the same for every

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<sup>1</sup> Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

<sup>2</sup> The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

<sup>3</sup> 12 U.S.C. 16, 481, 482, 1467.

<sup>4</sup> 12 U.S.C. 16, 482.

<sup>5</sup> 12 U.S.C. 16. *See also* 12 U.S.C. 1467 (providing that the Comptroller has the authority to recover costs of examination of FSAs "as the Comptroller deems necessary or appropriate.").

national bank and FSA in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket.<sup>6</sup> The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Fees sets forth the marginal assessment rates applicable to each asset-size bracket for each year, as well as other assessment components and fees.<sup>7</sup> Under part 8, the OCC may adjust the marginal rates to account for inflation.<sup>8</sup> The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is necessary to meet the OCC's supervisory obligations.<sup>9</sup>

In recent years, marginal assessment rates for most national banks have been relatively stable.<sup>10</sup> Since the enactment of the Dodd-Frank Act,<sup>11</sup> however, the OCC's responsibilities have expanded and changed in several important ways. These include assuming responsibility for the supervision of FSAs and the need to devote appropriate resources to the implementation of the Dodd-Frank Act, as well as supervising compliance with its requirements. The Dodd-Frank Act and other post-crisis reforms have also increased the level and complexity of OCC supervisory activities, especially with respect to large institutions. We have recently reviewed the marginal rates applicable to national banks and FSAs with over \$40 billion in assets and believe that an adjustment beyond an increase for inflation is appropriate in light of our increased supervisory

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<sup>6</sup> 12 CFR 8.2(a).

<sup>7</sup> 12 CFR 8.8(a) (providing for the Notice of Fees). Under part 8, the OCC also collects assessments from Federal branches and Federal agencies.

<sup>8</sup> 12 CFR 8.2(a)(4).

<sup>9</sup> 12 CFR 8.8(b).

<sup>10</sup> The marginal rates on the assets of large banks and FSAs in excess of \$40 billion in asset size were not increased between 1995 and 2013. In the 1994 Notice of Fees, the OCC increased the marginal rates for all asset brackets, including the bracket that applied to assets above \$40 billion. From 1995 through 2013, the marginal rate for that asset bracket did not increase. The OCC first assessed FSAs in 2011, after the functions of the Office of Thrift Supervision (OTS) were assigned to the OCC under the Dodd-Frank Act. Since September 2012, the OCC has applied the same assessment schedule to national banks and FSAs. Therefore, when the OCC implemented full inflation indexation in 2014, that adjustment applied to FSAs.

<sup>11</sup> Pub. L. 111-203, 124 STAT. 1376 (2010).

responsibilities.

## **II. Description of the Proposed Rule and Comments Received**

*Increase in marginal rates.* The OCC published a proposed rule in the Federal Register on April 28, 2014 to amend 12 CFR part 8 and increase assessments through an amended Notice of Fees.<sup>12</sup> The proposal called for the marginal assessment rate for banks and FSAs with more than \$40 billion in assets to increase by 14.5 percent, beginning September 30, 2014. Under the proposal, the effective increase in assessments for banks and FSAs with more than \$40 billion in assets would range from 0.32 percent to 14 percent, depending on the total assets of the institution as reflected on its June 30, 2014, Call Report, with an average increase in assessments for affected banks and FSAs of 12 percent. As proposed, the rule would not increase assessment rates for banks and FSAs with \$40 billion or less in total assets. Most banks and FSAs have assets of \$40 billion or less and, therefore, would not be affected by the increase in assessments.

The proposed increase in marginal assessment rates primarily reflects changes in the OCC's supervisory responsibilities arising out of the Dodd-Frank Act, which generally requires additional OCC supervisory resources for large banks and FSAs. The proposed increase for large banks and FSAs also reflects the fact the OCC did not raise marginal rates on the assets of large banks and FSAs in excess of \$40 billion between 1995 and 2013.<sup>13</sup> In addition, the proposed increase for large banks and FSAs represents a relatively small percentage of return on assets (ROA) that the increase in assessments would represent for these institutions. Finally, the proposal reflects the OCC's supervisory judgment that a rate increase would strain the limited resources of community banks and FSAs and would be unwarranted for these smaller

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<sup>12</sup> 79 FR 23297 (April 28, 2014).

<sup>13</sup> The OCC did not increase the marginal rates for FSAs after the OCC became the supervisor of those entities on July 21, 2011, although the actual assessment rates for particular FSAs may have increased or decreased when the OCC applied the OCC's assessment structure to FSAs.

institutions, in light of the fact that many of the OCC's enhanced responsibilities are directed toward large institutions.

*Conforming amendments to part 8.* The proposal included a conforming amendment to 12 CFR part 8 to make it consistent with the proposed increase in assessments and an amendment to part 8 to add a reference to section 318 of the Dodd-Frank Act, which reaffirmed the Comptroller's broad discretion to set assessments and to determine the assessment methodology. The proposal also included an update to 12 CFR 8.8 to reflect the current title of the Notice of Fees.

*Comments on the proposed rule.* The OCC received two comments on the proposed rule. The first commenter, a trade association for community banks, supported the proposed rule and commended the OCC for focusing the increase in assessments on large banks and FSAs. In this commenter's opinion, it is appropriate for larger and more complex banks and FSAs to bear the burden of the higher assessments, given that the supervision of those institutions, particularly with respect to Dodd-Frank Act implementation, is more resource intensive than supervision of community banks. The commenter also stated that a rate increase for community banks would strain the limited resources of those institutions.

The second commenter, a trade association for midsize banks, which the commenter defined as banks with between \$10 billion and \$50 billion in assets, agreed that the proposed increase in assessments focused appropriately on large banks and FSAs, but urged the OCC to make changes to the final rule. Specifically, the commenter suggested that the threshold for the increase in assessments be raised from \$40 billion to \$50 billion to avoid raising assessments for banks the commenter considers midsize. The commenter also suggested that the OCC consider alternative metrics for assessments, such as the complexity of a bank or FSA's operations, and

the costs of regulatory compliance, particularly with the Dodd-Frank Act, as a percentage of a bank's ROA. The OCC will consider whether these alternative metrics would be appropriate components of the assessment structure in future reviews of the assessment system.

The final rule retains the \$40 billion threshold for the assessment increase for several reasons. First, banks and FSAs with more than \$40 billion in assets typically have complex banking operations and therefore require significant supervisory resources.<sup>14</sup> Second, the assessment increase for banks and FSAs between \$40 billion and \$50 billion is relatively small, with a range of .20% for a \$41 billion asset institution to 1.77% for a \$50 billion asset institution.<sup>15</sup> This is because, with asset-size brackets, fees increase with asset size. Third, the great majority of midsize banks and FSAs has assets under \$40 billion, and therefore will not be affected by the assessment increase.<sup>16</sup> For these reasons, the OCC continues to view the \$40 billion threshold as an appropriate proxy for increased supervisory costs and an appropriate threshold for increased assessments.

### **III. Description of the Final Rule**

The final rule adopts the proposed increase to marginal rates without change. Under the final rule, marginal assessment rates for national banks and FSAs with assets of more than \$40 billion will increase by 14.5 percent and will be effective for the assessment due on September 30, 2014. Marginal rates for banks and FSAs with \$40 billion or less in assets will remain the

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<sup>14</sup> The commenter notes that some rulemakings required by the Dodd-Frank Act, including the OCC's stress testing rule, use a \$50 billion asset threshold, and therefore suggests that the \$50 billion threshold apply to the assessments increase. The OCC, however, has not treated the \$50 billion threshold as the only basis for dividing midsize and large institutions. The OCC divides supervision into three programs (community, midsize, and large) and the divisions among these programs are based only partially on size. Some institutions with less than \$50 billion in assets are classified as large while some institutions with more than \$50 billion are classified as midsize, with the classification based on the complexity of the institution and other factors. The assessment fee schedule (with eleven asset brackets) reflects this more graduated distinction, rather than a hard \$50 billion distinction between large and midsize banks and FSAs.

<sup>15</sup> The proposed rule provided a table of proposed assessment increases by sample asset size. *See* 79 FR at 23299. The increase in assessments for a specific institution within this range depends on the total assets of the institution.

<sup>16</sup> The number of OCC-supervised institutions in the \$40 and \$50 billion asset range is small.

same as set out in the 2014 Notice of Fees, published on December 12, 2013. The final rule continues the OCC's present assessment methodology and does not change the asset bracket table in 12 CFR 8.2(a). The revised marginal rates for national banks and FSAs with over \$40 billion in assets are reflected in the following table:

### **Revised General Assessment Fee Schedule**

If the amount of total balance-sheet assets (consolidated domestic and foreign subsidiaries) is (millions)		The semiannual assessment will be		
Over	But not over	This amount	Plus	Of excess over (millions)
Column A	Column B	Column C	Column D	Column E
\$ 0	\$ 2	\$ 5,997	0.000000000	\$ 0
2	20	5,997	0.000236725	2
20	100	10,258	0.000189379	20
100	200	25,408	0.000123092	100
200	1,000	37,717	0.000104156	200
1,000	2,000	121,041	0.000085218	1,000
2,000	6,000	206,259	0.000075749	2,000
6,000	20,000	509,255	0.000064454	6,000
20,000	40,000	1,411,611	0.000048553	20,000
40,000	250,000	2,382,671	0.000037936	40,000
250,000		10,349,260	0.000037556	250,000

The final rule amends 12 CFR part 8 to make it consistent with the proposal to increase the marginal assessment rates. Specifically, the final rule revises 12 CFR 8.2(a)(4) to recognize that the OCC may increase the marginal rates in amounts that exceed the rate of inflation, as under the current proposal. In addition, the final rule revises 12 CFR 8.2 to reflect section 318 of the Dodd-Frank Act, which reaffirmed the Comptroller's broad discretion to set assessments and to determine the assessment methodology. The final rule also updates 12 CFR 8.8 to make a technical change to reflect the current title of the notice of fees.

## **IV. Regulatory Analysis**

### **Paperwork Reduction Act**

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. This final rule amends part 8, which has an approved information collection under the PRA (OMB Control No. 1557-0223). The final rule does not introduce any new collections of information, nor does it amend part 8 in a way that modifies the collection of information that OMB has approved. Therefore, no PRA submission to OMB is required.

### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires generally that, in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of a rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration (SBA) to include banking organizations with total assets of less than or equal to \$500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

As of December 31, 2013, the OCC supervised 1,741 banks (1,135 commercial banks, 66 trust companies, 492 Federal savings associations, and 48 branches or agencies of foreign banks). Approximately 1,231 of OCC-supervised institutions are small entities based on the SBA's definition of small entities for RFA purposes. As discussed in the **SUPPLEMENTARY**



**INFORMATION** above, the increase in assessments will only affect institutions with more than \$40 billion in total assets. As such, pursuant to section 605(b) of the RFA, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act**

The OCC has analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation). The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or the private sector, of \$100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

### **Section 302 of the Riegle Community Development and Regulatory Improvement Act**

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) requires that, subject to certain exceptions, regulations issued by the Federal banking agencies that impose additional reporting, disclosure, or other requirements on insured depository institutions, take effect on the first day of the calendar after publication of the final rule. This effective date requirement does not apply if the issuing agency finds for good cause that the regulation should become effective before such time. 12 USC 4802.

The OCC finds there is good cause for this final rule to become effective before the first day of a calendar quarter. The basis for this finding is that the final rule does not impose any

new reporting or disclosure burdens on banks and FSAs. While certain banks and FSAs will pay a higher assessment, the additional assessment does not require any changes to systems or procedures. For these reasons, the final rule will become effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

### **List of Subjects in 12 CFR Part 8**

Assessments, National banks, Savings associations, Reporting and recordkeeping requirements.

### **Authority and Issuance**

For the reasons set forth in the preamble, the OCC amends 12 CFR part 8 as follows:

### **PART 8—ASSESSMENT OF FEES**

1. The authority citation for part 8 continues to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(1)(B); and 15 U.S.C. 78c and 78l.

2. Section 8.2 is amended by revising paragraphs (a) introductory text (preceding the table) and (a)(4) to read as follows:

#### **§ 8.2 Semiannual assessment.**

(a) Each national bank and each Federal savings association shall pay to the Comptroller of the Currency a semiannual assessment fee, due by March 31 and September 30 of each year, for the six-month period beginning on January 1 and July 1 before each payment date. The Comptroller of the Currency will calculate the amount due under this section and provide a notice of assessments to each national bank and each Federal savings association no later than 7 business days prior to collection on March 31 and September 30 of each year. In setting

assessments, the Comptroller of the Currency may take into account the nature and scope of the activities of a national bank or Federal savings association, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller of the Currency determines is appropriate, as provided by 12 U.S.C. 16. The semiannual assessment will be calculated as follows:

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(4) Each year, the OCC may index the marginal rates in Column D to adjust for the percent change in the level of prices, as measured by changes in the Gross Domestic Product Implicit Price Deflator (GDPIPD) for each June-to-June period. The OCC may at its discretion adjust marginal rates by amounts other than the percentage change in the GDPIPD. The OCC will also adjust the amounts in Column C to reflect any change made to the marginal rate.

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3. Section 8.8 is revised to read as follows:

**§ 8.8 Notice of Comptroller of the Currency Fees.**

(a) December notice of fees. A “Notice of Office of the Comptroller of the Currency Fees and Assessments” (Notice of Fees) shall be published no later than the first business day in December of each year for fees to be charged by the OCC during the upcoming year. These fees will be effective January 1 of that upcoming year.

(b) Interim and amended notice of fees. The OCC may issue a notice of “Interim Office of the Comptroller of the Currency Fees and Assessments” or a notice of “Amended Office of the Comptroller of the Currency Fees and Assessments” from time to time throughout the year as necessary. Interim or amended notices will be effective 30 days after issuance.

Dated: July 2, 2014

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Thomas J. Curry  
Comptroller of the Currency

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